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March 21, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dr. Thomas P. Stanley
Chief Engineer
Federal Communications Commission
2025 M Street, N.W.
Room 7002
Washington, D.C. 20554

Re: Docket No. 90-314; Erratum to Third Report and Order

Dear Dr. Stanley:

As counsel to Personal Communications Network Services of New York, Inc. ("PCNS-NY"), we are writing to register our stern objection to the insufficiency of the Erratum to the Third Report and Order issued by the FCC in Docket No. 90-314. The Erratum was issued by your office on March 14, 1994 purportedly to correct an egregious factual error in the Third Report and Order that misstates the record regarding PCNS-NY's pioneer's preference request. Specifically, in Paragraph 123 of the Third Report and Order, the Commission reiterates and quotes the comments filed by Cox Enterprises, Inc. on PCNS-NY's pioneer's preference request. On March 17, 1992, Cox officially requested that these comments be dismissed by the Commission and stated that it takes no position on the merits of the pioneer's preference request of PCNS-NY. (A copy of Cox's request is attached.)

Despite this official withdrawal of Cox's comments, the Commission not only included Cox's comments in the Third Report and Order, it quoted the comments. The Erratum issued by the Commission on March 14, 1994 does not correct the record. The Erratum does not, as it should, eliminate the Commission's summation or quotation of the comments made by Cox -- comments that Cox itself asked be dismissed and withdrawn. The Erratum merely references Cox's request in a footnote. What the Commission has accomplished through this Erratum is merely to make Cox's request a matter of record but not to honor it.

PCNS-NY's reputation as a legitimate and serious experimenter with PCS technologies is directly undermined by the continued reference in Paragraph 123 of the Third Report and Order to Cox's initial position on PCNS-NY's pioneer's preference request that upon a correct examination of the record as withdrawn. If the Third Report and Order is not adequately

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corrected, PCNS-NY will continue to be prejudiced and its experimental record with PCS unjustly questioned. PCNS-NY has spent millions of dollars in experimenting with PCS. The value of this is quickly swept away by retention without cause of a single unwarranted sentence in the Third Report and Order.

In order to adequately correct the record, all references to Cox's comments on PCNS-NY's pioneer's preference request must be eliminated by striking the first sentence in Paragraph 123 and striking the last line in Paragraph 124. Accordingly, we hereby request issuance of a second erratum that corrects the record and honors Cox's request to dismiss and withdraw its comments. Without this erratum and elimination of all references to Cox's comments on PCNS-NY's pioneer's preference request, the Third Report and Order will remain grossly inaccurate and unfairly distort the record of PCNS-NY.

Sincerely,

Andrew D. Lipman / s/s

Andrew D. Lipman
Shelley L. Spencer

cc: Chairman Reed Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Bruce A. Franca
Rodney Small
R. Craig Roos
Steven Curtin

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re:)	
)	Gen. Dkt 90-314
Personal Communications Network)	
Services of New York, Inc.)	No. PP-16
For a Pioneer's Preference)	
In the Licensing Process for)	
Personal Communications Services)	

To: Chief, Office of Engineering and Technology

Request for Partial Dismissal of Opposition

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby requests that its opposition to the grant of a pioneer preference request of Personal Communications Network Services of New York, Inc. ("PCNS") be dismissed. On January 24, 1992, Cox filed comments in response to the Commission's Public Notice announcing the acceptance for filing of seventeen requests for pioneer preference awards for developments in Personal Communications Services (PCS).^{1/} In its comments Cox identified several pioneer preference requests that appeared to be little more than preference lottery tickets and opposed grant of those requests. Cox took no position on the remaining PCS pioneer preference requests.

Subsequent to filing its comments, Cox discovered that the information previously available from the FCC concerning the pioneer preference request of PCNS was incomplete. Accordingly,

^{1/} FCC Public Notice, Pioneer's Preference Requests Accepted in GEN Docket No. 90-314, mimeo 20796, released November 27, 1991.

Cox requests that the portion of its January 24 comments concerning the PCNS preference request be dismissed. Cox takes no position on the merits of the PCNS request.

Respectfully submitted,

COX ENTERPRISES, INC.


Werner K. Hartenberger
Laura H. Phillips

Its Attorneys

Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037
202-857-2500

March 17, 1992

CERTIFICATE OF SERVICE

I, Hilarie Gaylin, do hereby certify that on this 17th day of March, 1992, I have caused a copy of the foregoing Request for Partial Dismissal of Opposition of Cox Enterprises, Inc. to be hand delivered or deposited in U.S. mail, first class postage prepaid, addressed to each of the parties on the service list below.

Shelley L. Spencer, Esq.
Swidler & Berlin
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007-3051
Counsel for Personal Communications
Network Services of New York, Inc.

* Rodney Small
Office of Engineering and Technology
Federal Communications Commission
Room 7332
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Hilarie Gaylin
Hilarie Gaylin

* via hand delivery

